

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF PSYCHOLOGY**

18 VAC 30-20-10 et seq. Regulations Governing the Practice of Psychology

REGISTRAR'S SUBMISSION PACKAGE

Analysis of Proposed Amendments to Regulation

1. Basis of Regulation:

Title 54.1, Chapter 24 and Chapter 26 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and responsibility to promulgate regulations.

§ 54.1-3606 establishes the requirement for the licensure of school psychologists-limited and specifies the qualifications which must be met.

2. Statement of Purpose:

Amendments are proposed pursuant to a statutory mandate in Chapters 967 and 1005 of the 1999 Acts of the Assembly which provide for the Board to license school psychologists-limited upon review of credentials and payment of an application fee. Regulations of the Board for licensure and practice are promulgated to protect the health, safety and welfare of children who are in the need of school psychologist services.

3. Substance of Regulations:

18 VAC 125-20-10. Definitions.

A definition for "school psychologist-limited" is added to clarify that it is a person licensed pursuant to § 54.1-3606 to provide school psychology services in public school divisions.

18 VAC 125-20-30. Fees.

- The proposal establishes an application processing and initial licensure fee of \$85 to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licenses, and a \$10 fee for a wall certificate.

- The proposed biennial renewal fee \$100 reflects the cost of administrative and disciplinary activities of the Board and the allocated costs of the Department.
- A \$35 late renewal fee is proposed to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.
- All remaining fees applicable to this license are proposed at the same rate as for the other licensure categories.

18 VAC 125-20-43. Requirements for licensure as a school psychologist-limited.

The proposed amendments establish the documentation required for licensure in accordance with the provisions of § 54.1-3606 of the Code of Virginia.

4. Issues of the Regulation:

1) Qualifications for licensure.

Chapters 967 and 1005 of the 1999 Acts of the Assembly amended the practice act for psychology by adding section B to §54.1-3606, which mandates that the Board promulgate regulations for the licensure of school psychologists-limited. The Code is very specific that the Board shall issue a license "without examination" to persons "licensed by the Board of Education with an endorsement in psychology and a master's degree in psychology." Therefore, the Board was not authorized to impose additional criteria or qualifications for licensure, and the adopted regulations follow the specific language of the law.

2) Establishment of fees for school psychologists-limited.

The Board recently submitted proposed fee changes for its three existing licensure categories based on the agency's *Principles for Fee Development*. The same *Principles* were used to establish application, renewal, and late-renewal fees for school psychologists-limited. Other fees are generic to all professions, and will be assessed at the same rate as already established for the existing licensure categories.

Since the credentials review of the school psychologists-limited applications will be less involved than the review of applications for independent practice, there will be less board member and staff time spent in review. Therefore, the Board determined that the application fee should reflect the less costly review. The proposed \$85 application fee is comprised of a \$25 processing fee based on the estimated cost of staff time, plus ½ of the biennial renewal fee based on the average time period of initial licensure, plus a \$10 fee for a wall certificate based on printing and mailing costs.

The Board also determined that the likelihood of disciplinary action is much lower for this new category, since practice is limited to structured school settings under appropriate supervision. Therefore, the Board is proposing a renewal fee at half the rate of the other licensure categories to cover the administrative costs of board meetings, mailings, and staff time, and the cost of disciplinary

hearings at a reduced rate.

The proposed late renewal fee is based on 35% of the biennial renewal fee, in accordance with the agency's *Principles for Fee Development*. As stated previously, a proposal to change fees for the other licensure categories according to the same *Principles* has been submitted to the administration for approval.

3) Scope of practice for school psychologists-limited.

During the development of regulations, questions were raised about the scope of practice for school psychologists-limited. While the statute is clear that their practice is limited to the public schools of the Commonwealth, but it does not further specify the scope of activities which are or are not permitted. However, the practice of school psychology is defined in § 54.1-3600, so it is presumed that persons practicing with the school license would be practicing within that scope of practice definition. Therefore, the Board determined that no additional amendments were necessary or authorized to clarify the scope of practice for school psychologists-limited, who are also subject to disciplinary action for unprofessional conduct if they practice without skill and safety.

Advantages to the licensees and the school systems:

Persons seeking licensure as school psychologists-limited will only need to meet the requirements of law - a master's degree in school psychology and licensure from the Department of Education with an endorsement in the field. There is very little benefit to the individuals holding this license, since it will not entitle them to practice outside the public schools where they are already employed.

The advantage of these regulations, which simply establish a license as required by law, is for the employers of the licensees who will seek Medicaid reimbursement for their services. If the Health Care Financing Authority does reimburse for services rendered by persons holding this limited license, schools will have significant additional dollars with which to pay for mandated services to children.

Disadvantages to the licensees:

For licensees, there will be some additional costs - \$85 to apply for the license and \$100 to renew the license every two years. In addition, persons holding the new license will be subject to the laws and regulations of the Board of Psychology as well as the rules and policies of the Board of Education and the local school systems.

Advantages or disadvantages to the public:

The advantages of this license to the public are the possibility that additional Medicaid funding will be made available to support school psychology services offered in the public schools, thereby increasing the availability of such services to children. In addition, local school funds that would be required to pay for such services may be available for other needs.

Advantages or disadvantages to the agency:

The Board may have to license and regulate as many as 500 new licensees, but there will be additional income through fees to support that activity. There should be very little impact on the Enforcement division, since the Board anticipates few disciplinary problems with this licensure category.

5. Estimated Impact of the Regulations

A. Projected number of persons affected and their cost of compliance:

There are approximately 500 persons who hold licensure from the Department of Education who could be affected by these regulations.

The cost for compliance will depend on whether any of persons licensed under the Department of Education will actually apply for the licensure. There has been some uncertainty about whether the federal agency, Health Care Financing Authority (HCFA), will reimburse school divisions for school psychology services of persons holding this new limited license under the Board of Psychology. If it does not, there would be no incentive for the persons to seek this license.

It is also unknown whether local school divisions will financially assist school psychologists-limited in becoming licensed, since the benefit of such licensure accrues solely to the school system and not to the licensee.

B. Cost to the agency for implementation:

Impact on Board revenue:

If the estimated 500 persons who currently work in the public schools as psychologists all sought licensure under the Board of Psychology, there would be an increase of \$42,500 in board revenues for application fees and approximately \$50,000 additional revenue each biennium from renewal fees.

Impact on Board expenditures:

The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for inclusion of these persons in mailings of regulations and newsletters to licensees of the board. In addition, there may be some additional costs for disciplinary hearings. The addition of several hundred new licensees increases the probability that the number of investigative and disciplinary cases will increase. There is no estimate of how much additional costs would be incurred.

C. Cost to local governments:

Unless the local school systems voluntarily provide financial support for licensure of school psychologists-limited, there will be no impact of these regulations on local government.

D. Fiscal Impact Prepared by the Department of Planning and Budget: (To be attached)

E. Agency Response:

c. Source of the legal authority to promulgate the contemplated regulation.

18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for licensure, the Code provides a mandate for this licensure in:

§ 54.1-3606. License required.

A. *In order to engage in the practice of applied psychology, school psychology, or clinical psychology, it shall be necessary to hold a license.*

B. *Notwithstanding the provisions of subdivision 4 of § 54.1-3601 or any Board regulation, the Board of Psychology shall license, as school psychologists-limited, persons licensed by the Board of Education with an endorsement in psychology and a master's degree in psychology. The Board of Psychology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school psychologists-limited.*

Persons holding such licenses as school psychologists-limited shall practice solely in public school divisions; holding a license as a school psychologist-limited pursuant to this subsection shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Psychology to offer to the public the services defined in § 54.1-3600.

The Board shall issue persons, holding licenses from the Board of Education with an endorsement in psychology and a license as a school psychologist-limited from the Board of Psychology, a license which notes the limitations on practice set forth in this section.

Persons who hold licenses as psychologists issued by the Board of Psychology without these limitations shall be exempt from the requirements of this section.

d. Letter of assurance from the office of the Attorney General.

See attached.

e. Summary of Public Comment received in response to the Notice of Intended Regulatory Action.

The Notice of Intended Regulatory Action was published on June 21, 1999 and subsequently sent to the Public Participation Guidelines Mailing List of the Board; there was no comment received during the 30-day comment period.

f. Changes to existing regulations.

18 VAC 125-20-10. Definitions.

A definition for "school psychologist-limited" is added to clarify that it is a person licensed pursuant to § 54.1-3606 to provide school psychology services in public school divisions.

18 VAC 125-20-30. Fees.

The proposed amendment would set the application fee at \$85, which is approximately half the application fee for persons who are fully licensed to practice. The renewal fee is also proposed at one half the current fee for the independent practice categories. The proposed late renewal fee is equivalent to the renewal fee recently proposed by the Board for the other licensure based on the agency's Principles for Fee Development.

18 VAC 125-20-43. Requirements for licensure as a school psychologist-limited.

The proposed amendments establish the documentation required for licensure in accordance with the provisions of § 54.1-3606 of the Code of Virginia.

g. Statement of reasoning for the regulations.

Chapters 967 and 1005 of the 1999 Acts of the Assembly provide a specific mandate in § 54.1-3606 for the **licensure of school psychologists-limited** and for the Board to license upon review of credentials and payment of an application fee in accordance with regulations of the Board. Regulations for the licensure of school psychologists-limited by the Board were adopted in accordance with amended provisions of § 54.1-3606.

Since the legislation mandating such licensure included an enactment clause directing the Boards of Education and Medical Assistance Services to promulgate regulations within 280 days, the Board of Psychology has acted as expeditiously as possible on the development of these regulations. The intent of the legislation cannot be implemented until those persons, currently employed in the public school system and thereby exempt from licensure, can be licensed by the Board of Psychology to practice in a limited setting. The Board cannot act on licensure, as mandated by the statute, until it has regulations in place for the required review of credentials and payment of an application fee for school psychologists-limited.

The Boards of Education and Medical Assistance Services must have regulations in place by January 12, 2000. As close to that date as possible, the Board of Psychology would like to have final regulations in effect for licensure of school psychologists-limited, so that the program can be implemented.

h. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated by the statute to establish licensure for school psychologists-limited. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

During the development of regulations, the Board did address the following issues:

1) Qualifications for licensure.

Chapters 967 and 1005 of the 1999 Acts of the Assembly amended the practice act for school psychology by adding section B to §54.1-3606, which mandates that the Board promulgate regulations for the licensure of school psychologists-limited. The Code is very specific that the Board shall issue a license "without examination" to persons "licensed by the Board of Education with an endorsement in school psychology and a master's degree in school psychology." Therefore, the Board was not authorized to impose additional criteria or qualifications for licensure, and the adopted regulations follow the specific language of the law.

2) Establishment of fees for school psychologists-limited.

Since the credentials review of the school psychologists-limited applications will be less involved than the review of applications for independent practice, there will be less board member and staff time

spent in review. Therefore, the Board determined that the application fee should reflect the less costly review. The proposed \$85 application fee is comprised of a \$25 processing fee based on the estimated cost of staff time, plus ½ of the biennial renewal fee based on the average time period of initial licensure, plus a \$10 fee for a wall certificate based on printing and mailing costs.

The Board also determined that the likelihood of disciplinary action is much lower for this new category, since practice is limited to structured school settings under appropriate supervision. Therefore, the Board is proposing a renewal fee at half the rate of the other licensure categories to cover the administrative costs of board meetings, mailings, and staff time, and the cost of disciplinary hearings at a reduced rate.

The proposed late renewal fee is based on 35% of the biennial renewal fee, in accordance with the agency's *Principles for Fee Development*. As stated previously, a proposal to change fees for the other licensure categories according to the same *Principles* has been submitted to the administration for approval.

3) Scope of practice for school psychologists-limited.

During the development of regulations, questions were raised about the scope of practice for school psychologists-limited. While the statute is clear that their practice is limited to the public schools of the Commonwealth, but it does not further specify the scope of activities which are or are not permitted. However, the practice of school psychology is defined in § 54.1-3600, so it is presumed that persons practicing with the school license would be practicing within that scope of practice definition. Therefore, the Board determined that no additional amendments were necessary or authorized to clarify the scope of practice for school psychologists-limited, who are also subject to disciplinary action for unprofessional conduct if they practice without skill and safety.

i. Statement of clarity.

Prior to the adoption of proposed regulations, the Board and its Legislative/Regulatory Committee discussed the issues related to the new license in open sessions, which included members of the public. The clarity and reasonableness of the language which was adopted had the approval of the Board members and the Assistant Attorney General who worked with the Board in drafting regulatory language.

j. Schedule for review of regulation.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Psychology (18 VAC 125-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Board will review this set of regulations in 2002 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

k. Anticipated Regulatory Impact

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Psychology must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for inclusion of these persons in mailings of regulations and newsletters to licensees of the board. In addition, there may be some additional costs for disciplinary hearings. Although it is unlikely that the Board will receive many disciplinary cases for these practitioners, who work in structured settings under supervision, the addition of several hundred new licensees increases the probability that the number of investigative and disciplinary cases will increase. There is no estimate of how much additional costs would be incurred.

Projected cost on localities:

Unless local school boards voluntarily agree to pay for the licensure of school psychologists-limited, there would be no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed school psychologists-limited working in public school settings.

Estimate of number of entities to be affected:

There are approximately 500 persons who hold licensure from the Department of Education with an endorsement in school psychology who could be affected by these regulations.

